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**NORTH CAROLINA  
REGISTER**

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**ADMINISTRATIVE ORDER**

**PROPOSED RULES**

**FINAL RULES**

**LIST OF RULES AFFECTED**



**ISSUE DATE: JUNE 16, 1986**

**Volume 1 • Issue 3 • Pages 98-132**

# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
**Publication Deadlines and Schedules**  
**(April 1986 - March 1987)**

| Issue Date | Last Day for Filing | Last Day for Electronic Filing | Earliest Date for Public Hearing | Earliest Date for Adoption by Agency | Earliest Effective Date |
|------------|---------------------|--------------------------------|----------------------------------|--------------------------------------|-------------------------|
| 04/15/86   | 03/25/86            | 04/01/86                       | 05/15/86                         | 06/14/86                             | 08/01/86                |
| 05/15/86   | 04/24/86            | 05/01/86                       | 06/14/86                         | 07/14/86                             | 09/01/86                |
| 06/16/86   | 05/27/86            | 06/03/86                       | 07/16/86                         | 08/15/86                             | 10/01/86                |
| 07/15/86   | 06/25/86            | 07/02/86                       | 08/14/86                         | 09/13/86                             | 11/01/86                |
| 08/15/86   | 07/28/86            | 08/04/86                       | 09/14/86                         | 10/14/86                             | 12/01/86                |
| 09/15/86   | 08/26/86            | 09/02/86                       | 10/15/86                         | 11/14/86                             | 01/01/87                |
| 10/15/86   | 09/25/86            | 10/02/86                       | 11/14/86                         | 12/14/86                             | 02/01/87                |
| 11/14/86   | 10/23/86            | 10/30/86                       | 12/14/86                         | 01/13/87                             | 03/01/87                |
| 12/15/86   | 11/25/86            | 12/02/86                       | 01/14/87                         | 02/13/87                             | 04/01/87                |
| 01/15/87   | 12/29/86            | 01/05/87                       | 02/14/87                         | 03/16/87                             | 05/01/87                |
| 02/16/87   | 01/26/87            | 02/02/87                       | 03/18/87                         | 04/17/87                             | 06/01/87                |
| 03/16/87   | 02/23/87            | 03/02/87                       | 04/15/87                         | 05/15/87                             | 07/01/87                |

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETINGS:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of ABRAHAM PENN JONES now, by virtue of the authority vested in me by law I do hereby appoint him Hearing Officer and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 2nd day of June 1986.

s/Robert A. Melott  
Chief Hearing Officer

## PROPOSED RULES

### TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Agriculture intends to adopt regulations cited as 2 NCAC 9L .2000 - CHEMIGATION. The purpose of the proposed regulations is to minimize the risk of pesticide backflow into public water systems, surface water and groundwater by requiring the utilization of antisiphon devices and air gaps whenever land, crops, and/or plants are chemigated.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 143-463; 143-466.

The public hearing will be conducted at 1:00 p.m. on August 22, 1986 at Board Room, Agriculture Building, Raleigh, N.C. 27611.

Comment Procedures: Data, opinion, and argument concerning these rules must be submitted to the N.C. Pesticide Board by or on August 22, 1986. Written comments may be mailed directly to Mr. John L. Smith, Secretary, North Carolina Pesticide Board, P.O. Box 27647, Raleigh, N.C. 27611.

### SUBCHAPTER 9L - PESTICIDE SECTION

#### SECTION .2000 - CHEMIGATION

##### .2001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

(1) Antisiphon Device. Any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.

(2) Automatic Low Pressure Drain. A self-activating device to drain that portion of an irrigation pipeline whose contents could potentially enter the water

supply when operation of the irrigation system pumping plant fails or is shut down.

(3) Check Valve. A device to provide a positive closure of an irrigation pipeline or pesticide injection line that effectively prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.

(4) Chemigation. Any process whereby pesticides are applied to land, crops, and/or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.

(5) Chemigation and/or Irrigation Water Supplies. Any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.

(6) Flow Interrupter. A device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.

(7) Functional Systems lock. A system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.

(8) Inspection Port. A place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.

(9) Irrigation. The act of mechanically supplying water to land, crops and/or plants.

(10) Irrigation System. Any device or combination of devices having hose, pipe or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow automatically prevents any backflow to the water supply.

(11) Public Water System  
 (a) a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:  
 (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and  
 (ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.  
 (b) It is either a "community water system" or a "non-community water system":  
 (i) Community Water System. A public water system which serves at least 15 service connections or regularly serves at least 25 year-round residents.  
 (ii) Non-Community Water System. A public water system which is not a community water system.

(12) Vacuum Relief Valve. A device to automatically relieve or break vacuum in an irrigation pipeline.

#### .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS

(a) These systems shall be fitted with effective antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide supplies during times of irrigation system failure or equipment shutdown. If a public water system is being utilized as the water source, the chemigation system shall not be connected directly to it. See requirements in Rule .2003 of this Section.  
 (b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.  
 (c) Such safety devices or valves shall be installed between (1) the irrigation

system pump discharge and the point of pesticide injection into the irrigation system, and (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).

(d) Such systems shall effectively meet the following criteria:

- (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set.
- (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port.
- (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter.
- (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to

prevent the drainage from reentering the water supply.

(5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A normally closed solenoid-operated valve or other similar device is an acceptable method to positively prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown.

(6) a check valve shall be located on the pesticide injection line between the point of pesticide injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container.

(7) a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide injection into the irrigation system, could be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

#### .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM

(a) An irrigation system used for pesticide application shall not be connected directly to a public water system.

(b) The water from a public water system must be discharged into a reservoir tank.

(c) There shall be a complete physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

#### .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS

(a) Antisiphon devices and a functional systems interlock, used for

chemigation purposes, shall be installed and maintained to ensure proper function during chemigation.

(b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly.

(c) If modifications or changes in design, technology, irrigation practices or other similar reasons warrant the use or placement of equipment in lieu of that specified herein, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this Regulation.

(d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs and/or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

#### TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to amend regulations cited as 10 NCAC 26D .0001, 10 NCAC 26D .0002 and 10 NCAC 26D .0004. The purpose of the proposed regulations is to give the Division of Medical Assistance the authority to mandate that a second opinion be rendered for selected elective surgical procedures. Unnecessary surgeries are avoided as a result of second opinions therefore holding down medical costs without negatively impacting quality of care.

The proposed effective date of this action is October 1, 1986.

Authority: G.S. 108A-25(b); 42 C.F.R. 440.230(d); 42 C.F.R. 456.1.

The public hearing will be conducted at 1:30 p.m. on July 18, 1986 at 1985 Umstead Drive, Raleigh, N.C., Room No. 201-A.

Comment Procedures: Written comments concerning these amendments must be submitted by July 18, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing.

## CHAPTER 26 - HUMAN RESOURCES MEDICAL SERVICES

### SUBCHAPTER 26D - LIMITATIONS ON

AMOUNT: DURATION: AND SCOPE

#### .0001 IMPATIENT HOSPITAL SERVICES

(e) Coverage for selected elective surgical procedures is contingent upon the rendering of a second opinion by another qualified practitioner when Medicaid is the primary payor. Categories of surgery which may be subject to a second surgical opinion requirement include hysterectomy, cholecystectomy, hemorrhoidectomy, knee surgery, coronary bypass, foot surgery, laminectomy, prostatectomy, tonsillectomy and adenoidectomy, inguinal hernia repair, varicose vein stripping and cataract surgery. This requirement may be waived by the state agency under the following conditions:

(1) Subsequent to the performance of the procedure the recipient is determined to be retroactively eligible;

(2) Unanticipated circumstances precluded performance of a second surgical opinion;

(3) Physician developed criteria precludes a second opinion.

In all cases the final decision to perform the surgery rests with the recipient. A third opinion is covered but not required.

#### .0002 OUTPATIENT HOSPITAL SERVICES

(f) Coverage for selected elective surgical procedures is

contingent upon the rendering of a second opinion by another qualified practitioner when Medicaid is the primary payor. Categories of surgery which may be subject to a second surgical opinion requirement include hysterectomy, cholecystectomy, hemorrhoidectomy, knee surgery, coronary bypass, foot surgery, laminectomy, prostatectomy, tonsillectomy and adenoidectomy, inguinal hernia repair, varicose vein stripping and cataract surgery. This requirement may be waived by the state agency under the following conditions:

(1) Subsequent to the performance of the procedure the recipient is determined to be retroactively eligible;

(2) Unanticipated circumstances precluded performance of a second surgical opinion;

(3) Physician developed criteria precludes a second opinion.

In all cases the final decision to perform the surgery rests with the recipient. A third opinion is covered but not required.

#### .0004 PHYSICIAN SERVICES

(b) Coverage for selected elective surgical procedures is contingent upon the rendering of a second opinion by another qualified practitioner when Medicaid is the primary payor. Categories of surgery which may be subject to a second surgical opinion requirement include hysterectomy, cholecystectomy, hemorrhoidectomy, knee surgery, coronary bypass, foot surgery, laminectomy, prostatectomy, tonsillectomy and adenoidectomy, inguinal hernia repair, varicose vein stripping and cataract surgery. This requirement may be waived by the state agency under the following conditions:

(1) Subsequent to the performance of the procedure the recipient is determined to be retroactively eligible;

(2) Unanticipated circumstances precluded performance of a second surgical opinion;

(3) Physician developed criteria precludes a second opinion.

In all cases the final decision to perform the surgery rests with the recipient. A third opinion is covered but not required.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to amend, repeal regulations cited as 10 NCAC 42D .1502; 41H .0201, .0301, .0304, .0405; 30 .0214; 41H .0104, .0302, .0303, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312.

The purpose of the proposed regulations: 10 NCAC 42D .1502 establishes the building construction requirements for Homes for the Aged and Disabled and Family Care Homes; 10 NCAC 41H .0201 sets forth regulations for adoption services provided by public child-placing agencies; .0301 specifies the functions of public child-placing agencies in their provision of adoption services; .0304 specifies the services that are provided to adoptive applicants by public child-placing agencies, and .0405 defines the categories of Adoption Assistance and extent of benefits; 10 NCAC 30 .0214 changes the frequency of verification of property and mandates verification of licensed vehicles when determining eligibility for food stamps.

The proposed effective date: 10 NCAC 30 .0214 October 1, 1986, all other rules September 1, 1986.

Statutory Authority: G.S. 48-1 et seq.; 108A-49; 108A-50; 108A-51; 131D-2; 143B-153.

The public hearing will be conducted at 10:00 a.m. on July 23, 1986 at 701 Barbour Drive, Council Building, Hearing Room, Raleigh, North Carolina.

Comment Procedures: Any interested person may present his/her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or call Bonnie Allred, 325 N. Salisbury Street, Raleigh, N.C. 27611, 919-733-3055.

## CHAPTER 30 - FOOD ASSISTANCE

### SECTION .0200 - MANUAL

#### .0214 ADDITIONAL MANDATORY VERIFICATIONS

(a) The county department will verify household size. Verification shall will be accomplished through a collateral contact or readily available documentary evidence. A collateral contact is defined as a verbal confirmation of a households' circumstances by someone outside the household, such as employees, landlords, neighbors, etc. A collateral contact may be made in person or by telephone.

(b) The county department will verify that the household actually incurs a major utility expense. Verification is required on a one-time basis unless the household has moved or changed its utilities or unless questionable.

(c) The county department will check Property Tax Listings prior to certifying households at initial application and once every twelve months thereafter.

(d) The county department will check the DMV listing for licensed vehicles at initial application and at each subsequent recertification, not to exceed once each three months.

### SUBCHAPTER 41H - ADOPTION STANDARDS

#### SECTION .0100 - GENERAL

##### .0104 SOCIAL AGENCY (REPEALED)

#### SECTION .0200 - ORGANIZATION AND ADMINISTRATION

##### .0201 PUBLIC AGENCIES

(a) Personnel and Staff

(1) There shall be a staff of persons who have demonstrated that they possess the knowledge, technical training, and skill to plan and carry out a sound adoption program consistent with the standards set forth in this Subchapter.

(2) The person supervising or carrying out the adoption work must have a master's degree from an accredited school of social work, plus two years of successful experience in the casework field, one year of which must have been related to child welfare, or must have successfully completed one year of work in an accredited school of social work and have three years of successful experience in

casework, two years of which must have been related to child welfare. If no person in the agency meets these qualifications, then qualified state office personnel will provide necessary supervision.

(b) Caseload. The caseload of the person carrying a full time adoption load should average no more than 50 active cases. These cases may include children being studied for placement, children in placement, adoptive home studies, and natural parents being helped. The geographic area covered must be taken into account.

(1) Rules in 10 NCAC 41N

.0210 shall govern the policies for public agencies providing adoption services in determining the qualifications for personnel and in the recruitment, retention, and effective performance of qualified personnel.

(2) Rules in 10 NCAC

41N .0211 shall govern the policies for public agencies in the hiring of staff, use of clerical staff, and use of volunteers.

(b) Caseload. The caseload size of social workers providing adoption services shall be in compliance with requirements set forth in 10 NCAC 41P .0002(c).

SECTION .0300 - FUNCTIONS OF AN ADOPTION AGENCY

.0301 GENERAL

Public and private child-placing agencies shall perform the following functions:

- (1) provision of services to natural biological parents considering adoption,
- (2) provision of services to the child considered for adoption,
- (3) provision of services to adoptive applicants through pre-placement studies,
- (4) selection of home and placement process,
- (5) supervision after placement,
- (6) fulfillment of social and legal responsibilities,
- (7) compilation and preservation of complete case records,
- (8) provision of post-adoption consultation service s-

.0302 SERVICES TO NATURAL PARENTS CONSIDERING ADOPTION  
(Repealed)

.0303 SERVICES TO THE CHILD CONSIDERED FOR ADOPTION  
(Repealed)

.0304 SERVICES TO ADOPTIVE APPLICANTS

(a) Study

(1) The agency shall make a pre-placement study of the adoptive home before placing a child in the home. The purposes of the adoptive home study shall be to evaluate the capacity of persons to become parents of an adopted child; to help the applicants determine whether they want a child and if they are ready to adopt; and to decide the kind of child who should be adopted. Further, the study should provide an opportunity for change in applicants' attitudes and expectations as they begin to have a better understanding of what is involved in adoption and the kind of children who are available for placement.

(2) Because agencies have the responsibility of predicting how applicants will care for children, it is important to know the applicants individually, in relation to each other, in relation to their own families, and in relation to the community in which they live.

(3) During the initial interview, it is important that the worker's attitude show acceptance of and respect for the applicants.

(4) Agencies may use a variety of procedures to study an adoptive home, but the goal of each study will be the same. The adoptive home study shall be developed through a succession of interviews with both applicants, separately and together, in their home and in the office.

(b) Record. There shall be a written record of the study, in the case file. When an application has been approved, the record should reflect discussion and evaluation from which the agency concludes that:

(1) All members of the household will welcome a child into the home.

- (2) The adoptive applicants have satisfactory family relationships, social relationships, and work adjustment.
- (3) The adoptive applicants are sufficiently emotionally mature to provide care for the child.
- (4) The adoptive applicants are in good health, as evidenced by medical history and a recent examination including negative blood tests and negative chest x-rays.
- (5) The applicants have a reasonably comfortable adjustment to their sterility, if this is their reason for applying to adopt. A medical statement regarding their inability to have their own child shall be a part of the record.
- (6) The adoptive parents have sufficient income to maintain a desirable standard of living, and can offer the child reasonable economic security.
- (7) The mother will remain at home until the child and parents have become well adjusted to each other. If the mother plans to return to work the plan of child care must have been carefully evaluated with the applicants.
- (8) The family is one in which the child will have the opportunity for religious or spiritual and ethical development, and will be helped to achieve a scale of values for himself, to build a practical philosophy of life, and to develop moral and social standards which will guide his conduct through life.
- (9) The family recognizes the importance of providing educational opportunities for the child in accordance with his interests, ability, and aptitudes.
- (10) The family recognizes the importance of helping the child to accept his adoptive status.
- (11) The home is in a good community where conditions afford opportunities for suitable companionship and for participation in community activities.
- (e) Decision. The adoptive applicants shall be told by the agency, when the study is completed, whether their application has been accepted

or rejected. Especially when their application is rejected, they should be given the opportunity for discussion of the agency's decision.

Rules in 10 NCAC 41P .0006, .0007, .0008, .0009, .0010, .0011, and .0012 shall govern the policies for public agencies providing adoption services in determining the procedures for recruitment of adoptive families, application process, adoptive study, notification to adoptive applicants of acceptance or denial of application, services to adoptive applicants and families, legal process, and record retention.

- .0305 CRITERIA FOR EVALUATING ADOPTIVE APPLICANTS (Repealed)
- .0306 AGENCY REQUIREMENTS FOR APPLICANTS (Repealed)
- .0307 REJECTION OF AN APPLICATION (Repealed)
- .0308 SELECTION OF HOME AND PLACEMENT PROCESS (Repealed)
- .0309 SUPERVISION
- .0310 AFTER PLACEMENT (Repealed)
- .0310 COMPLETION OF SOCIAL AND LEGAL RESPONSIBILITIES (Repealed)
- .0311 CASE RECORDS (Repealed)
- .0312 POST ADOPTION CONSULTATION (Repealed)

#### SECTION .0400 - ADOPTION ASSISTANCE: GENERAL

##### .0405 CATEGORIES OF ASSISTANCE AND EXTENT OF BENEFITS

(a) There are four categories of adoption assistance:

- (1) monthly cash payments;
- (2) vendor payments to providers of medical services;
- (3) vendor payments to providers of psychological, therapeutic, and remedial services;
- (4) vendor payments to providers of legal services for the filing of adoption proceedings.

(b) A child may be determined eligible for more than one category of assistance.

(c) Monthly cash payments from adoption assistance shall not exceed one hundred dollars (\$100.00) per month per child.

(d) Vendor payments from adoption assistance to providers of medical services not covered by Medicaid or other medical benefits shall not exceed twelve hundred dollars (\$1,200) per year per child.

~~(e)~~ (d)

Vendor payments from adoption assistance to providers of psychological, therapeutic, and remedial services shall not exceed twelve hundred dollars (\$1,200) per year per child.

~~(f)~~ (e)

Vendor payments from adoption assistance to providers of legal services shall not exceed two hundred fifty dollars (\$250.00) per child.

## SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

### SECTION .1500 - THE BUILDING

#### .1502 CONSTRUCTION

(b)

In a facility licensed before April 1, 1984, the building must be modified and maintained to meet all of the rules in this Section within the physical limitations of the building as it existed on April 1, 1984. Before any modifications are made to the building, the administrator should consult with the Construction Section of the Division of Facility Services to assure continued compliance with the rules of this Subchapter. Before requiring any major capital outlays for facility modification, the Construction Section will perform an on-site visit to evaluate the feasibility of the changes and recommend approval or disapproval.

(c)

Each facility licensed before April 1, 1984, must have the following minimum fire alarm system:

- (1) A fire alarm system will pull stations near each exit and sounding devices which are audible throughout the building must be provided;
- (2) Products of combustion (smoke) U L listed ionization detectors must be installed in all corridors. The detectors must be no more than 60 feet from each other and no more than 30 feet from any end wall;
- (3) Heat detectors or smoke detectors must be provided in unoccupied areas such as storage rooms, kitchens, living rooms, dining rooms, etc.;
- (4) All detection systems must be interconnected with the fire alarm system; and
- (5) The entire systems

under paragraph (c) of this Rule must be a U L listed, four hour battery emergency powered system with trickle charges or emergency generator.

(b) In a facility licensed before April 1, 1984, the building must meet and be maintained to meet all the requirements for new construction required by the North Carolina State Building Code in effect at the time the building was constructed. Where code requirements require a modification of the building's structural system, an alternative method may be used to meet the intent of the code.

(c) In a facility licensed before April 1, 1984 and constructed prior to January 1, 1975, the building, in addition to meeting the requirements of the North Carolina State Building Code in effect at the time the building was constructed, shall be provided with the following:

(1) A fire alarm system with pull stations near each exit and sounding devices which are audible throughout the building must be provided.

(2) Products of combustion U/L listed detectors (smoke) in all corridors. The detectors must be no more than 60 feet from each other and no more than 30 feet from any end wall.

(3) Heat detectors or products of combustion detectors in all storage rooms, kitchens, living rooms, dining rooms and laundries.

(4) All detection systems interconnected with the fire alarm system.

(5) Emergency power for the fire alarm system, heat detection system, and products of combustion detection system. The emergency power for these systems may be a manual start system capable of monitoring the building for 24-hours and sound the alarm for five minutes at the end of that time. The emergency power for the emergency lights shall be a manual start generator or a U/L approved trickle charge battery system capable of providing light for 1-1/2

hours when normal power fails.

(e) Effective July 1, 1987, resident bedrooms and resident services shall not be permitted on the second floor of any facility licensed prior to April 1, 1984 and classified as two-story wood frame construction by the North Carolina State Building Code.

## TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the Justice Department intends to amend regulations cited as 12 NCAC 4A .0101 and 12 NCAC 4C .0208 -.0209. The purpose of the proposed regulations is to show the new name of the agency; to include provisions governing non-criminal justice agency use of criminal histories for licensing and employment and to modify the existing language to include non-criminal Justice agencies.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 114-10; 114-10.1.

The public hearing will be conducted at 9:00 a.m. on July 16, 1986, at the conference room of 407 N. Blount Street, Raleigh, North Carolina 27601; the Administrative Office of the Division of Criminal Information.

Comment Procedures: All comments should be directed to E. K. Best, III Division of Criminal Information, 407 North Blount Street, Raleigh, North Carolina 27601. Interested persons may present their views either orally or in writing at the hearing. The record of the hearing shall be open to receive written comments from June 16, 1986, to 5:00 p.m. on July 15, 1986.

### SUBCHAPTER 4A - DIVISION OF CRIMINAL INFORMATION -0101 LOCATION

The administrative office of the Police Information Network is located at 407 North Blount Street,

Raleigh, North Carolina, 27611. Telephone (919) 733-3171.

#### -0101 NAME AND LOCATION

(a) The name of this agency shall be North Carolina State Bureau of Investigation, Division of Criminal Information. The same shall be referred to throughout these procedures as the Division of Criminal Information replacing the name Police Information Network.

(b) The acronym used for this agency shall be DCI. The same shall be referred to throughout these procedures replacing the acronym of PIN.

(c) The administrative office of the Division of Criminal Information is located at 407 North Blount Street, Raleigh, North Carolina, 27601. Telephone (919) 733-3171.

### SUBCHAPTER 4C - SECURITY AND PRIVACY

### SECTION .0200 - ACCESS AND DISSEMINATION OF COMPUTERIZED CRIMINAL INFORMATION

#### .0208 USE OF CCH FOR LICENSING AND EMPLOYMENT PURPOSES

(a) Criminal Justice agencies who want to use computerized criminal history information maintained by the Police Information Network Division of Criminal Information for licensing and employment purposes shall submit to the Director Assistant Director of the Police Information Network Division of Criminal Information a written request listing the types of licenses and permits in which they desire to use computerized criminal history information for their decision making process of issuing permits or licenses. A copy of the local ordinance(s) or a reference to the North Carolina General Statute(s) giving agency authority to issue a particular permit or license must be included in the written request.

(b) Authorization to use computerized criminal history information for licensing or employment purposes may be given only after the Director Assistant Director of the Police Information Network Division of Criminal Information and the North Carolina Attorney General's Office have evaluated

and authorized the authority of the North Carolina General Statute or local ordinance pertaining to the issuance of that particular license or permit.

(c) Upon authorization, a written notice will be submitted to the requesting agency authorizing that agency to use computerized criminal history information maintained by the Police Information Network Division of Criminal Information for specified licensing or employment purposes.

(d) After notice of authorization has been given, the agency's terminal will receive the capability to use the purpose code "E" in the purpose field of the computerized criminal history inquiry screens QHE and QRE. Once an agency has received this capability, it shall be required to use the purpose code "E" space and followed by the two character code assigned for that particular approved licensing purpose and an abbreviation of ultimate recipient of the record, whenever making an inquiry for one of the approved licensing or employment purposes. It shall also be required to maintain a log of all primary and any secondary dissemination for one year on all positive responses received from this type of inquiry.

(e) Any agency obtaining criminal history record information through PIN for any licensing or non-criminal justice employment purpose not approved by PIN shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board or federal or state law.

(f) Requests from non-criminal justice agencies to use criminal history information maintained by the Division of Criminal Information for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1.

(1) All such requests shall be submitted in writing to the SBI Assistant Director for the Division of Criminal Information who shall present the request to the Division of Criminal Information Advisory Policy Board for consideration of the request and approval or disapproval as appropriate. The determination as to what, if any, non-criminal justice agencies shall be

authorized to receive criminal history information shall be within the discretion of the Advisory Policy Board. Authorization to use criminal history information for licensing and employment purposes shall be granted only upon authorization of the Advisory Policy Board.

(2) Upon being approved, the requesting agency shall submit its requests for criminal history information to the Division of Criminal Information, Attention: Identification Section. Each request shall include sufficient documentation to establish and verify identity, including a set of fingerprints. Each request shall be accompanied by a fee established for such requests in the form of a certified cashier's check or money order.

(3) Criminal history in 4 information accessible by authorization of this section shall be North Carolina criminal history information only.

(4) Any agency granted approval shall be required to enter into a fee for service agreement with the Division of Criminal Information.

(f) Any agency obtaining criminal history record information through PIN for any licensing or non-criminal justice employment purpose not approved by PIN shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board or federal or state law.

(g) Any agency obtaining criminal history record information through DCI for any licensing or non-criminal justice employment purpose not approved by DCI shall be in violation of this Rule and subject to penalties determined by the DCI Advisory Policy Board or federal or state law.

(q) Any agency obtaining criminal history record information through DCI for any licensing or non-criminal justice employment purpose not approved by DCI shall be in violation of this Rule and subject to penalties determined by the DCI Advisory Policy Board or federal or state law.

.0209 RESTRICTIVE USE OF  
CCH FOR LICENSING  
OR EMPLOYMENT

(a) Use of computerized criminal history information maintained by the Police Information Network Division of Criminal Information for licensing or employment purposes shall only be authorized to those agencies who have complied with Rule .0208 of this Subchapter.

(b) The following requirements and restrictions shall be applicable to all criminal justice agencies who have received approval to use computerized criminal history information for licensing or employment purposes. Each such agency shall be responsible for their full and prompt implementation.

(1) In no case shall computerized criminal history information obtained for licensing or employment purposes be used or disseminated for any other purpose.

(2) In no case shall computerized criminal history information obtained for licensing or employment purposes be released to or reviewed by anyone other than the agencies authorized by the Director of the Police Information Network Assistant Director of the Division of Criminal Information.

(3) If applicable, the only data in the computerized criminal history which can be used in an agency's determination of issuing or denying a license or permit is conviction data or arrest data without a disposition which is presumed to be currently in the judicial process (a period of one year from date of arrest) on those crimes stipulated in the referenced North Carolina General Statute as grounds for disqualification of a license or permit. Each agency shall be responsible for reviewing each authorized General Statute and knowing what data can and cannot be used for grounds in denying or issuing a particular license or permit.

(4) Prior to denial of a license or permit due to data contained in a computerized criminal history record, a fingerprint card of the

applicant shall be submitted to the Identification Section for verification of that record belonging to the applicant of the license or permit.

(c) A "no hit" received by the Police Information Network Division of Criminal Information

on a computerized criminal history inquiry does not necessarily mean that individual does not have a record. If requesting agency desires a more complete check on applicant, a fingerprint card of applicant should be submitted to the State Bureau of Investigation, Identification Division Division of Criminal information, Identification Section.

TITLE 15 - NR&CD

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Natural Resources and Community Development, Division of Planning and Assessment intends to amend regulations cited as 15 NCAC 1A .0002; .0005-.0006.

The purpose of the proposed regulations is to explain the organization of the Department of NRCD, and list Commissions and Divisions.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 143B-9; 143B-10(c); 143B-11(a).

The public hearing will be conducted at 10:00 a.m. on July 17, 1986 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C. 27611

Comment Procedures: All persons interested in this hearing are invited to attend. Comments may be submitted in writing prior to, during, or by July 23, 1986, or may be presented orally at the hearing. Comments may be limited at the discretion of the hearing officer. Oral presentations which exceed five minutes must be presented in writing at the hearing. Explanations,

details, and copies of proposed rules may be obtained by writing or calling: Patricia Johnson, DNRCD, Planning and Assessment, P. O. Box 27687, Raleigh, NC 27611. Telephone (919) 733-6376.

## CHAPTER 1 - DEPARTMENTAL RULES

### SUBCHAPTER 1A - GENERAL ORGANIZATION

#### .0002 DEPARTMENT OFFICERS

The Secretary is assisted by one Deputy Secretary, one Special Assistant, an Assistant Secretary for Natural Resources, an Assistant Secretary for Policy Coordination, Parks and Community Resources, and an Assistant Secretary for Productivity Administration and Intergovernmental Relations.

The Deputy Secretary, the Special Assistant, and the assistant secretaries are appointed by the Secretary.

#### .0005 DEPARTMENT DIVISIONS

##### (a)

The department is organized into nine twelve divisions and four programs as follows:

###### {1} Divisions:

(1)

environmental management;

###### (2)

{b}

marine fisheries;

###### (3)

{c}

parks and recreation;

###### (4)

{d}

forest resources;

###### (5)

{e}

land resources;

###### (6)

{f}

community assistance;

###### (7)

{g}

economic opportunity;

###### (8)

{h}

employment and training; and

###### (9)

{i}

soil and water;

(10) N. C. Zoological Park;

(11) Water resources; and

(12) Coastal management.

###### {2} Programs:

{a} coastal management;

{b} rural private industry;

{c} water resources; and

{d} zoological park.

(b) {3} The Wildlife Resources Commission and its staff is assigned to the department for coordinating and reporting purposes.

#### .0006 DIVISION HEADS

(a) The directors of nine twelve divisions

and four programs of the department are appointed by the Secretary. The Director of Wildlife Resources is appointed by the Wildlife Resources Commission.

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to adopt regulation cited as 15 NCAC 10F .0351. The purpose of the proposed regulation is to establish a no-wake boat speed on that part of the Trent River lying between the Trent River Railroad Bridge and the Alfred A. Cunningham Highway (old US 70) Bridge, both being located within the city limits of New Bern in Craven County; and to designate the City of New Bern as a suitable agency for placement and maintenance of the uniform waterway markers implementing the rule.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 75A-3; 75A-15.

The public hearing will be conducted at 9:00 a.m. on July 16, 1986 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from July 1, 1986, to 5:00 p. m. on July 31, 1986. Such written comments must be delivered or mailed to the Wildlife Resources Commission, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina, 27611.

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

**SECTION .0300 -LOCAL WATER  
SAFETY REGULATIONS**

**.0351 NEW BERN**

(a) Regulated Area. This Rule applies to that part of the Trent River that is located within the city limits of New Bern in Craven County.

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed on the Trent River between the Trent River Railroad Bridge and the Alfred A. Cunningham Highway (old US 70) Bridge in the City of New Bern.

(c) Placement and Maintenance of Markers. The Board of Alderman of the City of New Bern is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Natural Resources and Community Development, Division of Employment and Training intends to amend regulations cited as 15 NCAC 17C .0002 (b). The purpose of the proposed regulations is to give authority for the director to award a contract to the successful bidder pending appeal if it will serve the interests of the potential participants.

The proposed effective date of this action is October 1, 1986.

**Statutory Authority:** G.S. 150B; 20 C.F.R. 629.52; 20 C.F.R. 629.58.

The public hearing will be conducted at 10:00 a.m. on July 17, 1986 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C. 27611.

**Comment Procedures:** All persons interested in this hearing are invited to attend. Comments may be submitted in writing prior to, during, or by July 23, 1986, or may be presented orally at the hearing. Comments may be limited at

the discretion of the hearing officer. Oral presentations which exceed five minutes must be presented in writing at the hearing. Explanations, details, and copies of proposed rules may be obtained by writing or calling: Patricia Johnson, DNRCD, Planning and Assessment, P. O. Box 27687, Raleigh, N.C. 27611. Telephone (919) 733-6376.

**SUBCHAPTER 17C - ADJUDICATIVE PROVISIONS/GENERAL PROVISIONS FOR ADMINISTRATIVE ADJUDICATIONS**

**.0002 PROCEDURES FOR ADMINISTRATIVE REVIEW**

(b) Complaints by division bidders or prospective bidders shall be filed with the director in writing within 7 days of receipt of notice that the bidder would not be awarded a specific contract. The hearing shall be conducted in Wake County after notice to the successful bidder that a complaint has been filed; the successful bidder shall have the opportunity to participate in the hearing. The hearing shall take place within 30 days of filing of the complaint. The director may take oral or written evidence and may entertain oral or written argument. The decision of the director shall be rendered in writing within 60 days of filing of the complaint. The director's decision may be appealed to the secretary within 10 days of receipt of notice of the decision. Where there is no written determination by the director, the 10 days within which to appeal will begin to run on the date of receipt of notice that no decision would be rendered, or 60 days from the filing of the complaint, whichever comes first. The secretary shall render a written decision within 30 days of the receipt of the appeal. The secretary's decision is final. The written decision shall state that the decision is a final decision. If the awarding of the contract will serve the interests of the potential participants, the director may award a

contract to the successful bidder pending appeal.

## TITLE 21 - LICENSING BOARDS

### N. C. STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-12 that the BOARD OF CPA EXAMINERS intends to amend regulations cited as 21 NCAC 8G.0404 CPE PROGRAM STANDARD. The purpose of the proposed regulations is to clarify existing Continuing Professional Education standards by addition of explanatory comments.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 93-12(8)(b).

The public hearing will be conducted at 9:00 a.m. on July 17, 1986 at N. C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, North Carolina 27605.

Comment Procedures: Any person interested in these rules may present written or oral comments relevant to the action proposed at the public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the board offices by July 15, 1986. Written statements not presented at the public hearing should be delivered to the board offices not later than 9:00 a.m., August 18, 1986.

## SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

### SECTION .0400 CONTINUING PROFESSIONAL EDUCATION

.0404

#### APPROVAL OF COURSES AND PROGRAMS CPE PROGRAM STANDARDS

Programs and courses for CPE credit must be in accounting and related subjects.

(1) Standards for program development:

(a) The program should

contribute to the professional competence of the participants.

Note: The fundamental purpose of CPE is to increase the CPA's professional competence. A professional person is one characterized as conforming to the technical and ethical standards of his profession. This characterization reflects the expectation that a person holding himself out to perform services of a professional quality needs to be knowledgeable within a broad range of related skills. Thus, the concept of professional competence is to be broadly interpreted. It includes, but is not restricted to, accounting, auditing, taxation, and management advisory services. Accordingly, programs contributing to the development and maintenance of other professional skills also should be recognized as acceptable continuing education programs. Such programs might include, but not be restricted to, the areas of communication, ethics, quantitative methods, behavioral sciences, statistics, and practice management.

(b) The stated program objectives should specify the level of knowledge the participant should have obtained or level of knowledge he should be able to demonstrate upon completing the program.

Note: Program developers should clearly disclose what level of knowledge and/or skill is expected to be mastered by completing a particular program. Such levels may be expressed in a variety of ways, all of which should be informative to potential participants. As an illustration, a program may be described as having the objective of imparting technical knowledge at such levels as basic, intermediate, advanced, or overview, which might be defined as follows:

(1) A basic level program

teaches fundamental principles or skills to participants having no prior exposure to the subject area.

(2) An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(3) An advanced level program teaches participants to deal with complex situations.

(4) An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of accounting or brings participants up to date on new developments in the subject area.

(c) The education and/or experience prerequisites for the program should be stated.

Note: All programs should clearly identify what prerequisites are necessary for enrollment. If no prerequisite is necessary, a statement to this effect should be made. Prerequisites should be specified in precise language so potential participants can readily ascertain whether they qualify for the program or whether the program is above or below their level of knowledge or skill.

(d) Programs should be developed by individual(s) qualified in the subject matter and in instructional design.

Note: Although both competencies are necessary in developing a program, this standard is not intended to require that any individual program developer be both technically competent and competent in instructional design. "Instructional design" is a plan that specifies the learning objectives of the program, the content of the program, the methods of presentation (such as case studies, lecture, work groups, programmed instruction, use of audio or visual aids, or group participation) and the manner of evaluating, if

practical, whether the learning objectives were achieved. Adequacy of technical knowledge or skill in instructional design may be demonstrated by appropriate experience or education. The level of technical competence and instructional design skills that the developer(s) should possess will vary depending on certain characteristics of the program; such as the number of times it will be presented, the length of the program, the complexity of the subject matter, and the number of participants.

(e) Program content should be current.

Note: The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. However, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

(f) Programs should be reviewed by a qualified person(s) other than the preparer(s) for to ensure compliance with the standards listed in this Rule.

Note: It may be impractical to review certain programs, such as a short lecture given only once; in these cases, more reliance must be placed on the competence of the presenter.

(2) Standards for program presentation:

(a) Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching methods, and CPE contact hours credit.

Note: In order for potential participants to most effectively plan their CPE, the salient features of any program should be disclosed. Accordingly, brochures or other announcements should be available well in advance of each program and should contain clear statements concerning objectives, prerequisites (if any), experience level, program content, the nature and extent of advance preparation, the teaching method(s) to be used, and the amount of credit to be given.

(b) Instructors or discussion leaders should be qualified with respect to program content and teaching method used.

Note: The instructor is a key ingredient in the learning process in any group program. Therefore, it is imperative that sponsors exercise great care in selecting qualified instructors for all group programs. A qualified instructor is one who is capable, through background, training, education, and/or experience, of providing an environment conducive to learning. He should be competent in the subject matter and skilled in the use of the appropriate teaching method(s). Although instructors are selected with great care, sponsors should evaluate their performance at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

(c) Program sponsors should encourage participation only by individuals with appropriate educational education and/or experience.

Note: So that participants can expect CPE programs to increase their professional competence, this standard encourages sponsors to urge only those who have the appropriate education

and/or experience to participate. The term "education and/or experience" in the standard also implies that participants will be expected to complete any advance preparation. An essential step in encouraging advance preparation is timely distribution of program materials. Although implementing this standard may be difficult, sponsors should make a significant effort to comply with the spirit of the standard by encouraging (1) enrollment only by eligible participants, (2) timely distribution of materials, and (3) completion of any advanced preparation.

(d) The number of participants and physical facilities should be consistent with the teaching method(s) specified.

Note: The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program, for example, should be considerably less than for a lecture program. The seating arrangement is also very important. For a discussion presentation, learning is enhanced if seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be available to encourage communication within a small group. In effect, class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.

(e) Programs should include some means of evaluating quality.

Note: Evaluations should be solicited from both participants and instructors. The

objective of evaluations is to encourage sponsors to strive for increased program effectiveness. Programs should be evaluated to determine whether:

1. Objectives have been met.
2. Prerequisites are necessary or desirable.
3. Facilities were satisfactory.
4. The instructor was effective.
5. Advance preparation materials were satisfactory.
6. The program content was timely and effective.

Evaluations might take the form of pre-tests for advance preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback to the instructor or sponsor, and so forth. Instructors should be informed of their performance, and sponsors should systematically review the evaluation process to ensure its effectiveness.

(3) Standards for program measurement:

(a) Courses and programs must have adequate record keeping. Fifty minutes of instruction will be accepted as one hour of course work. College credit course work shall be accepted at the rate of 15 hours for each semester hour and 10 hours for each quarter hour, and college non-credit course work shall be accepted on a basis equivalent to the actual contact hours. Course work in which the student receives Continuing Education Units (CEU) will be allowed one CPE hour for each one-tenth CEU awarded.

Note: The purpose of this standard is to develop uniformity in the measurement of CPE activity. A contact hour is 50 minutes of continuous participation in a group program. Under this standard, credit is granted only for full contact hours. For example, a group program lasting 100 minutes would count for 2 hours; however, one lasting

between 50 and 100 minutes would count for only 1 hour. A one-day program consists of 8 contact hours. For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as 3 contact hours.

Sponsors are encouraged to monitor group programs in order to accurately assign the appropriate number of credit hours for participants who arrive late or leave before a program is completed. Since credit is not allowed for preparation time for group programs, it should not be granted for the equivalent time in self-study programs. Self-study programs should be pre-tested to determine average completion time. One-half of the average completion time is the recommended credit to be allowed. For example, a self-study program that takes an average of 800 minutes to complete is recommended for 8 "contact hours" of credit.

(b) Credit for teaching CPE courses may be granted for up to 3 times the actual teaching time, one time only for a specific course within one year. When an instructor or discussion leader serves at a program for which participants receive CPE credit and at a level that increases his or her professional competence, credit should be given for preparation and presentation time measured in terms of contact hours. Credit may be claimed for a specific course one time only within one calendar year. CPE credit for instructors, speakers and discussion leaders will be limited to one half of the annual requirement.

Note: Instructors and discussion leaders should receive CPE credit for both preparation and presentation. For the first time they present a program, they should receive contact

hour credit for actual preparation hours up to 2 times the class contact hours. If a course is rated as 8 contact hours, the instructor could receive up to 24 contact hours of credit (16 hours for preparation and 8 hours for presentation). For repetitious presentations, the instructor should receive no credit unless he can demonstrate that the subject matter involved was changed sufficiently to require significant additional study or research.

In addition, the maximum credit for preparation and presentation should not exceed 50 percent of the total CPE credit an instructor or discussion leader accumulates in a reporting period. For example, if 40 hours of CPE are required yearly, and he actually taught 16 hours and took 30 hours to prepare, the most credit he could claim would be 20 hours.

(c) Formal correspondence or other individual study programs must require registration and provide evidence of satisfactory completion. Participants in self-study programs shall document their participation by registering with the CPE sponsor, and shall obtain from the sponsor evidence of satisfactory completion.

(d) Credit may be allowed for published articles and books provided they contribute to the professional competence of the licensee. Credit for preparation of such publications may be given on a self-declaration basis up to 25 percent of the renewal period requirement. In exception circumstances a licensee may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances which he/she feels justify a greater credit. The amount of credit so awarded will be determined by the board.

STATE BOARD OF EXAMINERS  
of PLUMBING AND HEATING  
CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Examiners of Plumbing and Heating Contractors intends to amend regulation cited as 21 NCAC 50 .0108.

The purpose of the proposed regulation is to consider amendment of its rules governing rule-making and administrative hearing procedures.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 87-18; 87-19.

The public hearing will be conducted at 9:00 a.m. on July 16, 1986 at the Offices of the Board, 806 Raleigh Building, 5 West Hargett Street, Raleigh, North Carolina.

Comment Procedures: Any person desiring to present oral data, views or arguments concerning the proposed rules must, at least ten days prior to the date of the hearing, file a written summary of his or her views with respect to the rules and a statement of his or her anticipated presentation to the Board prior to or at the time of the hearing. Presentations will be limited to ten minutes. Additional information concerning the proposed rule-making hearing may be obtained from the Board's offices, which are open from 8:30 a.m. to 5:00 p.m., Monday through Friday.

#### .0108 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) The model administrative procedures for rule-making and hearings, codified as Title 22, Subchapters 2B and 2C of the North Carolina Administrative Code, effective September 29, 1980 February 1, 1986, are hereby adopted by reference to apply to actions of the State Board of Examiners of Plumbing and Heating Contractors.

(b) The definitions contained in 22 NCAC 2A .0005 are adopted by reference and shall apply to the Board of Plumbing and Heating with the following modifications:

- (1) The agency address is set forth in Rule .0106 of this Section.
- (2) "Agency head" means the State Board of Examiners of Plumbing and Heating Contractors.

(c) Copies of 22 NCAC, Subchapters 2B and 2C, and 22 NCAC 2A .0005 may be

inspected in the administrative procedures section of the Attorney General's office, 107 Fayetteville Street, Raleigh, North Carolina. Copies may be obtained from the administrative procedures section for a charge of four dollars (\$4.00) ~~board office or at the Office of Administrative Hearings, Raleigh, N.C. Copies may be obtained for a charge to be determined by each office.~~

## FINAL RULES

### TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

#### SUBCHAPTER 1H - RESOLUTION OF SUBMERGED LANDS CLAIMS

#### SECTION .0100 - INTRODUCTION AND DELEGATIONS

##### .0101 INTRODUCTION

The Secretary of Natural Resources and Community Development was directed to establish and implement a plan for completion of the resolution of claims filed pursuant to G.S. 113-205 by December 31, 1990. The claims arise in twenty-five coastal counties, which overlap with the counties regulated by the Coastal Area Management Act of 1974. The permit letting procedure under G.S. 113A-100, *et seq.*, and G.S. 113-229 requires, among other things, the Division of Coastal Management to evaluate property rights in the waters and lands which were the subject of the claims filed pursuant to G.S. 113-205. The Division of Coastal Management is the department division best able to implement the plan for resolving the claims and is directed to implement the plan.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

##### .0102 DEFINITIONS

As used throughout this Subchapter:

- (1) "Claim" means information submitted by any person in response to G.S. 113-205(a).
- (2) "Claimants" mean any person who filed a claim or who succeeded to the interest of the person who originally filed a claim.
- (3) "Department" means the North Carolina Department of Natural Resources and Community Development.
- (4) "Director" means the Director of the Division of Coastal Management.
- (5) "Division" means the Division of Coastal Management of the Department of Natural Resources and Community Development.

(6) "Secretary" means the Secretary of the Department of Natural Resources and Community Development.

(7) "Source instrument" means the grant, deed, or other similar instrument issued by the State of North Carolina, its agencies, or earlier governments of the lands now comprising the state for the parcel or right claimed pursuant to G.S. 113-205.

(8) "State" means the State of North Carolina.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

##### .0103 DELEGATION OF AUTHORITY TO DIRECTOR

The following specific functions are delegated by the secretary to the director:

- (1) The authority to recommend modification of areas leased pursuant to G.S. 113-206(b);
- (2) The authority to recommend to the Marine Fisheries Commission pursuant to G.S. 113-206(a)(1) resolution of a claim based on oyster or other shell fish grant or a perpetual franchise for shellfish cultivation; and
- (3) The authority to respond to individual claims and issue final agency determinations pursuant to the procedures and policies set forth by this Subchapter.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

#### SECTION .0200 - RESOLUTION PROCEDURES

##### .0201 APPLICATION OF RESOLUTION PROCEDURE

The division shall apply the following suggested procedures to respond to the claims filed pursuant to G.S. 113-205. Individual claims may necessitate variations in the suggested procedures and such variations are authorized as deemed necessary or appropriate. The complete procedure used for each claim shall effectively apply the procedural mechanism unless the claim is resolved prior to completion of the established procedure by a letter of final determination issued by the division. Service

of initial notification and final resolution letters shall be evidenced by return receipts or other similar documentation.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

.0202 INITIAL REVIEW OF CLAIM  
Each claim shall be reviewed to ascertain whether:

- (1) the claim as filed met the minimum standards of G.S. 113-205 by inclusion of the source instrument, the instrument showing the interest of the claimant, and a map illustrating and locating the area;
- (2) the claim was required by or affected lands or rights within the scope of G.S. 113-205; and
- (3) the claim involved property subject to the tax credit donation deadline established in G.S. 105-151.12.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

.0203 LETTER OF  
NOTIFICATION

(a) The division shall initiate the claim resolution process by serving notice to the claimant which, at a minimum, requires a response to continue the resolution process.

(b) The letter of notification shall correspond to the determinations made during the initial review of claims. Claimants will be informed whether the claim is deemed complete or requires additional information. The letter will specifically itemize the additional information necessary to render the claim complete. The division shall allow claimants at least 30 but not more than 90 days to submit all additional required information.

(c) Determination that claims neither were required by nor affected lands and rights subject to G.S. 113-205 shall be included in the letter of notification. Failure by the claimant to provide evidence to the division within 90 days

which results in a reversal of the initial determination shall render the claim null and void. If the claimant can show that the determination was in error the division shall apply the additional procedures of this Subchapter.

(d) The tax credit donation program will be described in the letter of notification to each claim for property or rights that may be eligible for the program.

(e) The letter of notification shall clearly inform the claimant if failure to reply in a timely fashion shall result in his claim being declared abandoned or null and void. Failure to supplement claims deemed incomplete shall render the claims null and void for failure to comply with the minimum requirements of G.S. 113-205(a).

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

.0204 RESPONSE TO LETTER OF  
NOTIFICATION

(a) The division shall incorporate into the letter of notification a method for response. The division shall facilitate response, to the extent deemed necessary, by forms for response, instructions for response, or similar means.

(b) By the response, the claimant shall provide the following information:

- (1) whether the claimant continues to assert the claim;
- (2) the identity of grantees to whom the claimant has transferred the claim;
- (3) whether the claimant desires additional information regarding tax credits and other benefits available for donation of the claim to eligible entities;
- (4) such evidence as is necessary to refute the determination, if made, that the claim is not subject to G.S. 113-205; and
- (5) such other additional information as is necessary to evaluate the claim.

(c) The claim shall be declared abandoned if a response is not received by the division within the established 90 day period or if the claimant fails to respond

to any of the individual requests for information specified in the letter of notification.

(d) A follow-up request shall be made by the division when the information provided in response to a specific request is incomplete or inadequate to evaluate the claim. The claim shall be declared abandoned if the additional information is not received within 30 days of service of the follow-up request.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

#### .0205 FOLLOW-UP TO UNSERVED NOTIFICATION

(a) The division shall refer all letters of notification returned as unserved to the Attorney General's Office with a request that the person(s) who currently asserts title to the area subject to the G.S. 113-205 claim be identified.

(b) If the record holder of title cannot be identified, a public notice shall be printed in a newspaper of general circulation in the county in which the land is located. Such notice shall refer to the original claimant by name and the location of the area in question and shall allow any party claiming a chain of title to the original claim 30 days to contact the division. If no response is received within the 30 days, the claim shall be declared abandoned.

(c) The division shall send a letter of inquiry to the persons identified by the Attorney General's Office to determine whether that person asserts a connected chain of title to the G.S. 113-205 claim and thereby continues to assert the claim as filed.

(d) The division shall incorporate into the letter of inquiry a method for response and allow a minimum time of 30 but not more than 90 days for response.

(e) Subsequent takers of lands claimed pursuant to G.S. 113-205 shall submit documentation to establish an unbroken chain of title from the original claimant.

(f) After subsequent takers meet the additional requirements of this Rule, a letter of notification pursuant to Rule .0203 shall be issued.

(g) The original G.S. 113-205 claim shall be declared abandoned if no response to the letter of inquiry or no requested supporting documentation is received within the established 90 day time following service of the letter or request.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

#### .0206 CLAIMS DEEMED COMPLETE

(a) Claims shall be deemed complete when the file includes:

- (1) the source instrument;
- (2) The instrument showing the interest of the claimant and the chain of title connecting a subsequent taker to the original claimant; and
- (3) a map illustrating and locating the area.

(b) The division shall notify claimants as stipulated in Rule .0203 of this Subchapter, when the claim is deemed complete under G.S. 113-205. In its notification, the division will request any information required to supplement the claim for final evaluation and resolution.

(c) Each claim deemed complete after the submission of additional information shall be further evaluated to determine whether it encompasses lands or rights subject to G.S. 113-205.

(d) The following supplemental information shall be submitted by a claimant with a complete claim when it is requested by the division:

- (1) a chain of title which demonstrates an unbroken connection between the claimant and the source instrument;
- (2) a map of the claimed area conforming to the requirements of G.S. 113-202(i); and
- (3) an affidavit by the surveyor demonstrating the methods by which the platted boundaries were ascertained from the source instrument and the instrument through which the claimant asserts an interest.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

#### .0207 CLAIM DETERMINATION

(a) The validity of claims for which a connected chain of title is established, to the

division's satisfaction, to a state issued source instrument that included the area or rights claimed shall be determined in accordance with the law of this state and the policy statements embodied in these Regulations.

(b) Prior to issuance of a determination adverse to the claim, the division may contact the claimant with proposals for resolution of the claim by easements, donation of claimed areas, or similar conveyances.

(c) Claims that have not been declared abandoned or null and void shall be resolved by the issuance of a final determination that includes a statement of the law respecting review by the courts of the final determination pursuant to G.S. 113-206.

(d) Claimants who failed to respond within the required time to earlier requests for additional information shall be issued a final determination specifying the reason for the determination as provided in the notification sent earlier.

(e) Claimants who have failed to refute the determination that their claim was not required by nor affected lands and rights subject to G.S. 113-205 as provided for in Rule .0203 of this Subchapter shall be issued a final determination specifying the reason for the determination.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

## SECTION .0300 - STATE POLICIES

### .0301 INTRODUCTION

(a) The policies set forth in this Section shall serve as a guide in evaluating and resolving claims made pursuant to G.S. 113-205(a). The policies shall be applied in a manner which is not in conflict with the state's policy to conserve and protect its lands and waters for the benefit of all its citizenry as set forth in Article XIV, Section 5 of the Constitution of North Carolina or which limits the authority of the state and local governments to regulate the uses of the lands claimed pursuant to Article VII, Section 1 of the Constitution of North Carolina. Public trust rights of navigation, fishing, hunting, recreation, commerce, and the preservation of natural aesthetic and ecological

functions shall be preserved whenever possible in all claim determinations.

(b) These policies shall only be applied in the twenty-five counties specified in G.S. 113-205(a).

(c) The rules of this Subchapter establish the categories within which individual claims may be recognized. Claims in other categories shall not be recognized. Both individual claims and entire categories of claims listed in this Subchapter may be denied where such action is necessary to comply with the general policy of this Rule or other state law.

History Note: Statutory Authority G.S. 113-205; 113-206(f); 143B-10(a); Eff. June 1, 1986.

### .0302 FILLED LANDS

Filled lands which were created from the publicly owned beds of tidal waters or navigable in fact waters may be the subject of private ownership when:

- (1) the Council of State or other authorized state agency issued a deed for the filled lands; or
- (2) the filled lands are within the bounds of a deed issued by the Board of Education or its predecessors; or
- (3) the filled lands were raised using private funds under the authority of a permit issued to private individuals pursuant to G.S. 113-229, G.S. 113A-100 through -128, or both; or
- (4) the lands have been filled for more than thirty years, or twenty-one years with color of title, and the other requisites of adverse possession are satisfactorily shown.

History Note: Statutory Authority G.S. 1-35; 113-205; 113-206(f); 143B-10(a); 146-6; Eff. June 1, 1986.

### .0303 PRIVATELY OWNED BEDS

(a) The beds of natural streams, creeks and similar watercourses which are neither subject to the influx of salt water nor navigable-in-fact may be privately owned. The waters covering the bed are subject to public trust uses.

(b) The beds of water bodies created by the excavation of lands above the high water mark may be privately owned. The waters covering these beds shall be presumed subject to public trust uses until the owner conclusively rebuts the presumption by an adequate evidentiary showing.

History Note: Statutory Authority G.S. 1-35; 113-205; 113-206; 146-6; Eff. June 1, 1986.

#### .0304 MARSHLANDS AND SWAMPLANDS

(a) Non-tidal marshlands and swamplands, as that term is defined at G.S. 146-64(8), may be the subject of private ownership.

(b) Tidal marshlands specifically described and depicted in deeds issued by the Board of Education may be the subject of private ownership. All such tidal marshlands were conveyed to the Literary Fund subject to public trust rights. The public trust rights are in the nature of an easement.

History Note: Statutory Authority G.S. 113-205; 113-206; 143B-10(a); 146-20.1; Eff. June 1, 1986.

#### .0305 LIMITED RIGHTS

(a) Private interests which may be recognized in all other water and marshland areas for which claims were required by G.S. 113-205(a) shall be limited to the following:

- (1) shellfish leases;
- (2) shellfish franchises;
- (3) easements for riparian access;
- (4) duck blind leases;
- (5) mineral leases;
- (6) utility easements; and
- (7) easements for seine fishing.

(b) The division shall investigate all such rights issued in perpetuity to determine whether the secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) No fee interest shall be recognized in waters subject to the influx of salt water or in waters that are navigable in fact except the limited

interests in 15 NCAC 1H .0304(b) and 15 NCAC 1H .0303.

History Note: Statutory Authority G.S. 113-205; 113-206; 143B-10(a); 146-20.1; Eff. June 1, 1986.

### SUBCHAPTER 7H - STATE GUIDE-LINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .0200 - THE ESTUARINE SYSTEM

##### .0208 USE STANDARDS

(b)

(5) Marinas. Marinas are defined as any publicly or privately owned dock, basin, or wet boat storage facility constructed to accommodate more than 10 boats, and providing any of the following services: permanent or transient docking space; dry storage; fueling facilities, haul-out facilities and repair services.

Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels.

(A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:

(i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or

wind generated water circulation;

- (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery, shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;
- (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
- (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas will be considered on a case-by-case basis.

(C) To minimize coverage of public waters by docks and moored vessels, dry storage marinas shall be used where feasible.

(D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 sq. ft. of public trust waters for every one lin. ft. of shoreline adjacent to these public trust waters for construction of docks and mooring facilities. The 27 sq. ft. allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.

(E) To protect water quality of shellfishing areas marinas shall not be located within areas documented as a natural shellfish bed or adjacent to such areas if shellfish harvest closure is anticipated to result from the marina operation. A natural shellfish bed is defined in 15 NCAC 3C .0302 as an area of public bottom when ten bushels or more of shellfish per acre are found to be growing. This Rule shall not apply to waters considered by the state to be permanently closed to the taking of shellfish.

(F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.

(G) Marina basins shall be designed to promote flushing through the following design criteria:

- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
- (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.

(H) Marinas shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters.

(I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.

(J) Open water marinas shall be not enclosed within breakwaters that preclude circulation sufficient to maintain water quality.

(K) Marinas which

require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.

- (L) Marina design shall comply with all applicable requirements for management of stormwater runoff.
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.
- (N) Boat maintenance areas must be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.
- (O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.
- (P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs, etc.

History Note: Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); Eff. September 9, 1977; Amended Eff. June 1, 1986; December 1, 1985; March 1, 1985; July 1, 1983.

#### SUBCHAPTER 70 - NORTH CAROLINA ESTUARINE SANCTUARY

#### SECTION .0100 - GENERAL PROVISIONS

#### .0101 STATEMENT OF PURPOSE

The principal purposes of the North Carolina Estuarine Sanctuary and supporting programs are to:

- (1) preserve estuarine ecosystems representative of the various biogeographic regions and typologies in North Carolina and to make them available for continuous future study of the processes, functions, and influences which shape and sustain the estuarine ecosystems;
- (2) provide new information on estuarine ecosystem processes to decisionmakers as a basis for the promotion of sound management of coastal resources;
- (3) provide a focal point for educational activities that increase the public awareness and understanding of estuarine ecosystems, effects of man on them, and the importance of the estuarine systems to the state and the Nation;
- (4) accommodate traditional recreational activities, commercial fishing, and other uses of the Sanctuary as long as they do not disturb the Sanctuary environment and are compatible with the research and educational activities taking place there.

History Note: Statutory Authority G.S. 113-3; 113-8; 113A-164.2; Eff. July 1, 1986.

#### .0102 DEFINITIONS AS USED IN THIS SUBCHAPTER

Definitions as used in this Subchapter are:

- (1) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where sea water is measurably diluted with fresh water derived from land drainage.
- (2) "Estuarine Sanctuary" means a group of areas or components, each of which may include all or the key land and water portion of an estuary and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, set aside as a natural field laboratory to provide long-term opportunities for research, education, and

interpretation of the ecological relationships within the area.

History Note: Statutory Authority G. S. 113-3; 113-8; 113A-164.3; Eff. July 1, 1986.

.0103 RESPONSIBILITIES AND DUTIES OF ESTUARINE SANCTUARY PROGRAM

The Estuarine Sanctuary Program of the Division of Coastal Management shall be responsible for managing and protecting the North Carolina Estuarine Sanctuary; for promoting and coordinating research and educational programs at the components while allowing for compatible traditional uses; for maintaining a management plan for the Sanctuary; for maintaining cooperative agreements with scientific, educational, and resource management agencies and private citizens that will assist in the management of the Sanctuary; and for providing new information on estuarine processes to coastal management decisionmakers.

History Note: Statutory Authority G. S. 113-3; 113-8; 113A-164.4; Eff. July 1, 1986.

.0104 STATE AND LOCAL ESTUARINE SANCTUARY ADVISORY COMMITTEES

Advisory committees shall be established both for the entire Sanctuary Program and for each individual Sanctuary component. The committees shall advise the Sanctuary manager. Members of the committees shall include researchers, educators, managers, and citizens that use or are affected by the Sanctuary. The committees shall be appointed by the Secretary of the Department of Natural Resources and Community Development.

History Note: Statutory Authority G. S. 113-3; 113-8; 113A-164.2; Eff. July 1, 1986.

.0105 SANCTUARY COMPONENTS

The North Carolina Estuarine Sanctuary includes the following components:

- (1) Zeke's Island
- (2) Rachel Carson

(3) Currituck Banks

(4) Masonboro Island

Detailed boundary maps for each component of the Sanctuary are maintained and available for inspection at the Division of Coastal Management, 512 North Salisbury Street, Raleigh, North Carolina.

History Note: Statutory Authority G.S. 113-3; 113-8; 113A-164.2; Eff. July 1, 1986.

SECTION .0200 - MANAGEMENT: USE AND PROTECTION OF THE NORTH CAROLINA ESTUARINE SANCTUARY

.0201 MANAGEMENT PLAN

The Division of Coastal Management shall prepare a management plan for the Sanctuary. The management plan shall contain specific policies for research, education, and traditional uses at each component. The Secretary of the Department of Natural Resources and Community Development shall approve the management plan and its revisions. The Division of Coastal Management shall monitor and manage the components and report to the secretary violations of the approved plan and any other situations that may be harmful to the natural resources of the Sanctuary.

History Note: Statutory

Authority G.S. 113-3; 113-8; 113A-164; 143-341; 143-342; Eff. July 1, 1986.

.0202 SANCTUARY USE REQUIREMENTS

The following use requirements shall apply to all of the components of the Sanctuary:

- (1) The essential natural character of the Sanctuary shall be maintained.
- (2) Traditional recreational uses within each component shall be allowed to continue as long as the activities do not disrupt the natural integrity of the Sanctuary or any research or educational projects. Incompatible traditional uses shall include:
  - (a) fishing, hunting, or trapping activities not allowed by state regulations;
  - (b) target shooting;

- (c) hydraulic clam dredging within Sanctuary boundaries; and
- (d) use of vehicles off designated corridors at components where vehicles are allowed for upland transportation according to the management plan.
- (3) No user shall disturb a research project or research equipment in place at the Sanctuary.
- (4) Camping or any form of habitation, whether on the uplands, wetlands, or waters within Sanctuary boundaries, shall not be allowed without the written permission of the Division of Coastal Management.
- (5) Personal property not authorized by the management agency may not be placed within the boundaries of the Sanctuary for more than two consecutive days.
- (6) Users of the Sanctuary shall not disturb or remove any live animals, except those allowed by state hunting and fishing regulations as they apply to the Sanctuary, or vegetation within the Sanctuary unless such action is part of a research or educational project approved by the management agency.
- (7) Persons wishing to engage in scientific research or collection of natural materials within the Sanctuary shall first secure written permission from the management agency.
- (8) No activity shall be allowed which might pollute any stream or body of water in the Sanctuary. Acts of pollution shall include:
  - (a) Deposition of solid materials not indigenous to the local estuarine ecosystem; and
  - (b) Discharge of liquids other than uncontaminated estuarine water.
- (9) No other acts or uses which are detrimental to the maintenance of the property in its natural condition shall be allowed including, but not limited to, disturbances of the soil, mining, commercial or industrial uses, timber harvesting, ditching and draining, deposition of waste materials.

**History Note:** Statutory Authority G.S. 113A-164; Eff. July 1, 1986.

#### SUBCHAPTER 9C - DIVISION PROGRAMS

##### SECTION .0900 - FOREST DEVELOPMENT PROGRAMS

###### .0902 ADMINISTRATION OF PROGRAM

- (c) At the beginning of each fiscal year, the secretary may designate a portion of funds for certain approved practices designed to encourage reforestation at reduced costs or for other special purposes in designated areas. Such designations will be for the current year only. Funding so designated must be committed by December 31 of the year designated. Funds remaining uncommitted on December 31 will be reallocated on the "first come, first served" basis. The determination to designate funds by the secretary will be made in writing not less than six months prior to beginning of the fiscal year for which funds are designated.

**History Note:** Statutory Authority 113A-176; 113A-183; Eff. August 8, 1978; Amended Eff. July 1, 1986; October 1, 1984; August 1, 1982; January 15, 1981.

**NORTH CAROLINA ADMINISTRATIVE CODE**

LIST OF RULES AFFECTED

EDITION X, NO. 3

EFFECTIVE: June 1, 1986

**AGENCY**

**ACTION TAKEN**

## ADMINISTRATION

|     |             |          |
|-----|-------------|----------|
|     | .1701-.1704 | Repealed |
|     | .1801-.1803 | Repealed |
|     | .1901-.1902 | Repealed |
|     | .2001-.2006 | Repealed |
|     | .2101       | Repealed |
|     | .2106-.2110 | Repealed |
|     | .2112-.2115 | Repealed |
|     | .2117-.2118 | Repealed |
|     | .2122       | Repealed |
| 12  | .0101-.0103 | Repealed |
|     | .0201       | Repealed |
|     | .0204-.0206 | Repealed |
|     | .0301-.0304 | Repealed |
|     | .0401-.0402 | Repealed |
|     | .0501-.0505 | Repealed |
| 15  | .0101       | Repealed |
|     | .0103-.0104 | Repealed |
|     | .0106-.0107 | Repealed |
| 17  | .0101-.0102 | Repealed |
|     | .0203       | Repealed |
|     | .0104       | Repealed |
|     | .0201-.0204 | Repealed |
|     | .0301-.0304 | Repealed |
|     | .0401-.0402 | Repealed |
|     | .0501-.0502 | Repealed |
|     | .0601-.0602 | Repealed |
| 20  | .0101-.0104 | Repealed |
|     | .0201-.0207 | Repealed |
| 21B | .0101-.0104 | Repealed |
|     | .0201-.0207 | Repealed |
| 21C | .0001-.0002 | Repealed |
| 26A | .0001-.0003 | Repealed |
| 26B | .0101-.0103 | Repealed |
|     | .0201-.0205 | Repealed |
| 28  | .0101-.0104 | Repealed |
|     | .0201-.0206 | Repealed |
|     | .0301-.0305 | Repealed |
|     | .0401-.0405 | Repealed |
| 29  | .0101-.0104 | Repealed |
|     | .0201-.0202 | Repealed |
|     | .0301-.0303 | Repealed |
|     | .0401-.0406 | Repealed |
| 30A | .0102-.0106 | Repealed |
| 30A | .0202-.0204 | Repealed |
| 30A | .0209       | Repealed |
| 30A | .0211-.0212 | Repealed |
| 30A | .0302-.0304 | Repealed |
| 30A | .0308-.0314 | Repealed |
| 30A | .0402       | Repealed |
| 30B | .0006       | Repealed |
| 30C | .0101-.0103 | Repealed |
| 31  | .0001-.0002 | Repealed |
| 32  | .0101-.0102 | Repealed |
|     | .0201-.0206 | Repealed |
|     | .0301-.0306 | Repealed |
|     | .0307-.0308 | Repealed |
|     | .0401-.0403 | Repealed |
|     | .0404       | Repealed |
|     | .0405-.0407 | Repealed |
|     | .0501       | Repealed |
|     | .0502       | Repealed |
|     | .0503-.0511 | Repealed |
|     | .0601-.0602 | Repealed |
|     | .0701-.0702 | Repealed |
|     | .0703-.0705 | Repealed |
| 34  | .0101-.0104 | Repealed |
|     | .0201-.0207 | Repealed |

COMMERCE

4

NCAC

2R .1502

Amended

2S .0227

Amended

2T .0410

Amended

7 .0507(a);(d);(i) Temp. Repealed 5/3/86

7 .0507(a);(d);(i) Temp. Amended 5/3/86

BOARD OF ELECTIONS

|        |   |             |                |        |
|--------|---|-------------|----------------|--------|
| 8 NCAC | 7 | .0001-.0002 | Temp. Repealed | 5/1/86 |
|        | 7 | .0003-.0006 | Temp. Adopted  | 5/1/86 |

JUSTICE

|    |      |             |         |
|----|------|-------------|---------|
| 12 | NCAC | 9A .0103    | Amended |
|    |      | 9B .0114    | Adopted |
|    |      | .0224-.0225 | Adopted |
|    |      | .0401       | Amended |
|    |      | .0403-.0404 | Amended |
|    |      | .0411-.0412 | Adopted |
|    |      | 9C .0304    | Amended |
|    |      | .0307       | Amended |
|    |      | .0309       | Adopted |

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

|    |      |                |         |
|----|------|----------------|---------|
| 15 | NCAC | 1H .0101-.0103 | Adopted |
|    |      | .0201-.0207    | Adopted |
|    |      | .0301-.0305    | Adopted |
|    |      | 7H .0208(b)(5) | Amended |
|    |      | 7K .0203(c)    | Amended |

STATE TREASURER

|    |      |                |          |
|----|------|----------------|----------|
| 20 | NCAC | 1G .0205-.0206 | Repealed |
|    |      | .0207          | Adopted  |
|    |      | 2C .1601-.1603 | Adopted  |

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

| TITLE | DEPARTMENT                                  |
|-------|---|
| 1     | Administration, Department of               |
| 2     | Agriculture, Department of                  |
| 3     | Auditor, Department of State                |
| 4     | Commerce, Department of                     |
| 5     | Corrections, Department of                  |
| 6     | Council of State                            |
| 7     | Cultural Resources, Department              |
| 8     | Elections, State Board of                   |
| 9     | Governor                                    |
| 10    | Human Resources, Department of              |
| 11    | Insurance, Department of                    |
| 12    | Justice, Department of                      |
| 13    | Labor, Department of                        |
| 14A   | Crime Control, Department of                |
| 15    | Natural Resources and Community Development |
| 16    | Education, Department of                    |
| 17    | Revenue, Department of                      |
| 18    | Secretary of State                          |
| 19A   | Transportation, Department of               |
| 20    | Treasurer, Department of State              |
| *21   | Occupational Licensing Boards               |
| 22    | Administrative Procedures                   |
| 23    | Community Colleges, Department of           |
| 24    | Independent Agencies                        |
| 25    | Personnel, Department of State              |
| 26    | Office of Administrative Hearings           |

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

| CHAPTER | LICENSING BOARD   |
|---------|---|
| 2       | Architecture, Board of  |
| 4       | Auctioneers, Commission for   |
| 6       | Barber Examiners, Board of  |
| 8       | Certified Public Accountant Examiners                                       |
| 10      | Chiropractic Examiners, Board of  |
| 12      | Contractors, Licensing Board for  |
| 14      | Cosmetic Art Examiners, Board of  |
| 16      | Dental Examiners, Board of  |
| 18      | Electrical Contractors, Board of Examiners                                  |
| 20      | Foresters, Board of Registration for  |
| 21      | Geologists, Board of  |
| 22      | Hearing Aid Dealers and Fitters Board                                       |
| 26      | Landscape Architects, Licensing Board of                                    |
| 28      | Landscape Contractors, Registration Board of                                |
| 30      | Law Examiners, Board of   |
| 31      | Martial & Family Therapy Certification Board                                |
| 32      | Medical Examiners, Board of   |
| 33      | Midwifery Joint Committee   |
| 34      | Mortuary Science, Board of  |
| 36      | Nursing, Board of   |
| 37      | Nursing Home Administrators, Board of                                       |
| 38      | Occupational Therapist, Board of  |
| 40      | Opticians, Board of   |
| 42      | Optometry, Board of Examiners in  |
| 44      | Osteopathic Examination and Registration                                    |
| 46      | Pharmacy, Board of  |
| 48      | Physical Therapy, Examining Committee of                                    |
| 50      | Plumbing and Heating Contractors, Board of                                  |
| 52      | Podiatry Examiners, Board of  |
| 53      | Practicing Counselors, Board of   |
| 54      | Practicing Psychologists, Board of  |
| 56      | Professional Engineers and Land Surveyors                                   |
| 58      | Real Estate Commission  |
| 60      | Refrigeration Examiners, Board of   |
| 62      | Sanitarian Examiners, Board of  |
| 64      | Speech and Language Pathologists and<br>Audiologists, Board of Examiners of |
| 66      | Veterinary Medical Board  |

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|-----|------------------------------|
| A0  | - Administrative Order       |
| E   | - Errata                     |
| EO  | - Executive Order            |
| FR  | - Final Rule                 |
| GS  | - General Statute            |
| JO  | - Judicial Order             |
| LRA | - List of Rules Affected     |
| PR  | - Proposed Rule              |
| SO  | - Statements of Organization |
| TR  | - Temporary Rule             |

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